



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,743	01/22/2002	Robert E. Fischell	A1-01	8648

7590 03/24/2005
Robert E. Fischell
14600 Viburnum Dr.
Dayton, MD 21036

EXAMINER

GETZOW, SCOTT M

ART UNIT	PAPER NUMBER
----------	--------------

3762

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/051,743

Applicant(s)

FISCHELL ET AL. *ed*

Examiner

Scott M. Getzow

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-90 is/are pending in the application.
- 4a) Of the above claim(s) 87 and 88 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-59, 89 and 90 is/are allowed.
- 6) ☒ Claim(s) 60, 62-64, 67-71, 73 and 75-86 is/are rejected.
- 7) ☒ Claim(s) 61, 65, 66, 72 and 74 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

1. Claims 60,62-64,67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischell et al (6112116) in view of Yomtov et al (5313953).

As mentioned in the previous office action, Fischell teaches an implantable device which can detect a heart attack, and alert the patient with an alarm.

The device also has means to store the patient's electrogram (87), and the ability to transmit it to a remote location (col.2 ln. 43). Applicant has asserted in his

remarks that his prior patent does not teach detecting two different types of cardiac events, nor the ability to alarm the patient with different alarms for each type of cardiac event. The patent to Yomtov teaches an implantable device

which can detect two different types of cardiac events, arrhythmia and ischemia, (col. 3, ln. 30) and can store and transmit the electrograms to a remote location for analysis.

Further, having different types of alarms to be able to distinguish between cardiac events is also set forth in col. 10 line 61 to col. 11 line 2 of Yomtov. To

have the ability to detect two different types of cardiac events, as shown by

Yomtov, would have been obvious to use with Fischell in that a more

comprehensive picture of the patient's health would be obtained, thus resulting in

better care. Also, the use of different alarms, as mentioned in Yomtov, would

help differentiate the types of cardiac events, enabling better treatment of the

patient.

Art Unit: 3762

2. Claims 68,69,75-77,79,80-82,83,86 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischell et al in view of Unger (3724455) and Thompson (6083248).

Applicant has argued in his remarks that his prior patent (6112116) does not include a network support system, as that term is defined in the present specification. The patent to Unger teaches a network support system which has the ability to notify the patient's physician of the patient's condition, see col. 1, lines 45-65. Unger also teaches sending a signal to the patient that notifies him that he should call the central facility. Thompson teaches two-way voice communication between a patient and a medical support network, col. 5, lines 47-65. Further, Thompson teaches the use of GPS to locate a patient and the use of satellites to send an alarm. To have the features of Unger and Thompson included with the device of Fischell would enhance patient care by allowing the network operation support system to be in voice/data communication with both the patient and the patient's physician.

3. Claims 70,71,73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischell, Unger and Thompson and further in view of Yomtov.

As mentioned above, Yomtov explicitly teaches an implantable device which can detect arrhythmia, and which can produce different alarm indications for different cardiac events. It would have been obvious to use such features for reasons mentioned supra.

Art Unit: 3762

4. Claims 78,84,85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischell, Unger, Thompson, and further in view of Riff et al (US 2003/0139785).

Riff teaches the ability to have a patient record database 109, as well as the ability to give a medication prescription to the patient, see paragraphs 23-27. To have such features of Riff with the device of Fischell, Unger and Thompson would have been obvious in that frequently the patient needs immediate direction as to which medication among different medications should be taken, thus improving patient care.

Allowable Subject Matter

5. Claims 1-59,89,90 are allowed.
6. Claims 61,65,66,72,74 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


Since new rejections have been made, this action is not made final.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott M. Getzow whose telephone number is (571) 272-4946. The examiner can normally be reached on M-F, 9-5.

Art Unit: 3762

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Scott M. Getzow
Primary Examiner
Art Unit 3762

SMG